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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 180724688-8688-01]

RIN 0648-BI39

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Revisions to Red
Snapper and Hogfish Management Measures**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in two framework actions to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Gulf), as prepared by the Gulf of Mexico Fishery Management Council (Council). The framework actions are titled "Modify the Annual Catch Limit (ACL) for the Gulf Red Snapper and Hogfish Stocks" (ACL Framework Action) and "Modify the Red Snapper Recreational Annual Catch Targets (ACT)" (ACT Framework Action). This proposed rule would modify Gulf red snapper commercial and recreational ACLs (quotas) and ACTs, as well as the Gulf hogfish

(West Florida stock) stock ACL, as a result of recent stock assessments for each species. Additionally, this proposed rule would reduce the Federal charter vessel/headboat (for-hire) component's red snapper ACT buffer to a level that would allow a greater harvest in 2019 while continuing to constrain landings to the component and total recreational ACLs. The purposes of this proposed rule are to respond to updated stock assessment information, maximize socio-economic opportunities for red snapper in the Federal for-hire component, and to continue to achieve optimum yield (OY) for each stock.

DATES: Written comments must be received by [*insert date 30 days after date of publication in the* **Federal Register**].

ADDRESSES: You may submit comments on the proposed rule identified by "NOAA-NMFS-2018-0130" by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0130, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Peter Hood, NMFS Southeast Regional Office, 263 13th Avenue South, St.

Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the two framework actions, which each includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web site at *<https://www.fisheries.noaa.gov/action/framework-action-modification-recreational-red-snapper-annual-catch-target-buffers-0>*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf

reef fish fishery under the FMP. The FMP, which includes red snapper and hogfish, was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, the OY from federally managed fish stocks. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems.

All weights described in this proposed rule are in round (whole) weight.

Background

Red Snapper

The current red snapper stock ACL is equal to the acceptable biological catch (ABC) of 13.74 million lb (6.23 million kg); 51 percent is allocated to the commercial sector and 49 percent to the recreational sector. The recreational sector's ACL is further divided into the private angling component (57.7 percent) and Federal for-hire component (42.3

percent). In addition, recreational ACTs are in place for the recreational sector and its respective components. These component ACLs and ACTs were implemented in 2015 and are currently set to expire in 2022 (81 FR 86971, December 2, 2016).

The regulations require NMFS to project the component fishing seasons based on the respective ACTs, which are set 20 percent below the ACLs. The ACTs were implemented to reduce the likelihood of exceeding the private angling or Federal for-hire component ACLs, as well as the total recreational ACL. The commercial sector does not have an ACT because it is managed under an individual fishing quota program that effectively constrains landings to the commercial ACL.

As set through a framework action in 2017, the current red snapper sector ACLs are 7.007 million lb (3.178 million kg) for the commercial sector and 6.733 million lb (3.054 million kg) for the recreational sector (82 FR 26376, June 7, 2017). The current recreational component ACLs are 2.848 million lb (1.292 million kg) for the for-hire component and 3.885 million lb (1.762 million kg) for the private angling component.

The current red snapper recreational ACT is 5.386 million lb (2.443 million kg). The Federal for-hire component ACT is 2.278 million lb (1.033 million kg) and the private angling

component ACT is 3.108 million lb (1.410 million kg). As noted above, the component ACLs and ACTs are effective through 2022, after which sector separation ends and the recreational sector will be managed through a recreational ACL and an ACT, but no component ACLs or ACTs.

The Southeast Data, Assessment, and Review (SEDAR) 52 stock assessment for Gulf red snapper was completed in 2018 and was reviewed by the Council's Scientific and Statistical Committee (SSC) in May 2018. The assessment indicated the Gulf red snapper stock is not overfished or undergoing overfishing, and is still rebuilding consistent with the plan to rebuild the stock by 2032. The SSC determined that the stock assessment represented the best scientific information available, acknowledged the red snapper ABC could be increased, and recommended two different ABC options to the Council: a declining yield stream and a constant catch scenario. The Council decided to use the constant catch recommendation and set the ABC at 15.1 million lb (6.85 million kg).

Because the Federal for-hire component has not exceeded its applicable ACL or ACT, the ACT Framework Action was developed to reduce the buffer between the Federal for-hire component ACT and ACL. The Council did not consider decreasing the private angling

component ACT buffer because this component exceeded its ACL in 2 of the past 3 years. Application of the Council's ACL/ACT Control Rule resulted in a suggested buffer of 9 percent for the Federal for-hire component. The ACL/ACT Control Rule is used to determine a buffer based on factors such as recent harvest overages, the percent standard error in Federal for-hire landing estimates, stock status, and whether in-season accountability measures are used. The Council decided to change the Federal for-hire component ACT for the 2019 fishing year to reflect this reduced buffer. The reduction in the Federal for-hire component's ACL/ACT buffer would be effective only for 2019 to coincide with the second year of temporary changes to the management of the private angling component. All five Gulf states received exempted fishing permits (EFPs) from NMFS for the 2018 and 2019 fishing years to allow them to test limited state management of the private angling component. Each state was allocated a percentage of the private angling ACL and each state determined whether to manage a reduced portion of its ACL to account for management uncertainty. Therefore, the Council determined that the reduction in the Federal for-hire component ACT buffer should be limited to 2019. If state management of the private angling component is extended through an amendment to

the FMP, the Council could consider retaining the 9 percent buffer for the Federal for-hire component.

Hogfish

The West Florida stock of hogfish is contained completely within the jurisdiction of the Council and includes hogfish in the Gulf exclusive economic zone (EEZ) except south of 25°09' N. lat. off the west coast of Florida. As implemented through Amendment 43 to the FMP, the West Florida stock ACL is 159,300 lb (72,257 kg) for the 2019 and subsequent fishing years (82 FR 34574, July 25, 2017). There is no ACT designated for West Florida hogfish.

The SEDAR 37 Update assessment for the West Florida hogfish stock was completed in 2018. The assessment indicated the West Florida stock is not overfished or undergoing overfishing. The Council's SSC reviewed the assessment in May 2018, determined that the stock assessment represented the best scientific information available, and provided overfishing limit (OFL) and ABC recommendations based on an increasing yield stream. As a result of uncertainties in the update assessment, the SSC did not provide OFL and ABC recommendations beyond 2021. West Florida hogfish has a stock ACL that is equal to the ABC.

Management Measures Contained in this Proposed Rule

For red snapper, this proposed rule would revise the commercial and recreational sector ACLs and ACTs. For the 2019 fishing year, the for-hire component ACT would be set 9 percent below the component ACL. For hogfish, this proposed rule would revise the stock ACL for the West Florida stock.

Red Snapper ACLs, ACTs, and For-Hire Component ACT Buffer

Through this proposed rule, and as a result of the SEDAR 52 stock assessment and the recommendations of the Council's SSC, the ACL Framework Action would increase the total red snapper ACL from 13.74 million lb (6.23 million kg) to 15.1 million lb (6.85 million kg). Using the current sector allocation ratios the resulting ACLs would be 7.701 million lb (3.493 million kg) for the commercial sector, 7.399 million lb (3.356 million kg) for the recreational sector, 3.130 million lb (1.420 million kg) for the Federal for-hire component, and 4.269 million lb (1.936 million kg) for the private angling component.

As described in the ACT Framework Action, this proposed rule would temporarily reduce the Federal for-hire component ACL/ACT buffer from 20 percent to 9 percent in 2019, which in turn would increase the Federal for-hire component ACT. This would consequently increase the recreational ACT as it is the sum of the Federal for-hire and private angling component's

ACTs.

As a result of the increased red snapper ACLs and ACTs through the ACL Framework Action and the increased recreational and Federal for-hire component ACTs through the ACT Framework Action, for the 2019 fishing year, the recreational ACT would be 6.263 million lb (2.841 million kg) and the Federal for-hire component ACT would be 2.848 million lb (1.292 million kg). For 2020 and subsequent fishing years, the recreational ACT would be 5.919 million lb (2.830 million kg) and the Federal for-hire component ACT would be 2.504 million lb (1.136 million kg) for the 2020 through 2022 fishing years. The private angling component ACT would be 3.415 million lb (1.549 million kg) for the 2019 through 2022 fishing years. Therefore, the component ACTs in this proposed rule reflect a 9 percent buffer applied to the Federal for-hire component and a 20 percent buffer applied to the private angling component for 2019, and a 20 percent buffer applied to both for 2020 through 2022.

Hogfish Stock ACL

The ACL Framework Action would set the hogfish stock ACLs equal to the Council's SSC recommended ABCs of 129,500 lb (58,740 kg) for 2019, 141,300 lb (64,093 kg) for 2020, and 150,400 lb (68,220 kg) for 2021. Additionally, the ACL (and ABC)

proposed for 2021 would be in effect for the 2021 and subsequent fishing years. Although the proposed ACLs for 2019 through 2021 and beyond are less than the current stock ACL, landings in recent years have not exceeded the current ACL (e.g., less than 50 percent of the stock ACL in 2017). Landings are also expected to be constrained to the stock ACL by an increase in the minimum size limit from 12 to 14 inches (30.5 to 35.6 cm), fork length, implemented in 2017. This measure is expected to reduce the directed harvest of hogfish.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the framework actions, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if

adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination follows.

A description of the proposed rule, why it is being considered, and the objectives of, and legal basis for this proposed rule are contained in the preamble of this rule at the beginning of the **SUPPLEMENTARY INFORMATION** section and in the **SUMMARY** section. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, the requirements of the Paperwork Reduction Act do not apply to this proposed rule.

This proposed rule would directly apply to recreational fishers (anglers) and indirectly to for-hire fishing businesses (NAICS code 487210) that harvest red snapper and/or West Florida hogfish in Federal waters of the Gulf. Anglers are not considered small entities as that term is defined in 5 U.S.C. 601(6), whether fishing from for-hire fishing, private or leased vessels. Therefore, estimates of the number of anglers directly affected by the rule and the impacts on them are not provided

here. For-hire fishing businesses that harvest red snapper and/or hogfish in Federal waters would be indirectly affected if the rule were to cause changes in angler demand for their services. The RFA does not consider such indirect impacts on small entities.

This proposed rule would directly affect commercial fishing businesses (NAICS code 11411) that harvest red snapper and/or hogfish in the Gulf. First, it would increase the commercial ACL for red snapper, and second, it would decrease the commercial ACL for hogfish.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of \$11 million for all of its affiliated operations worldwide.

The best economic data available related to the commercial harvest of red snapper is available through 2016. From 2012 through 2016, an annual average of 409 vessels landed at least 1

1b (0.45 kg) of red snapper in the Gulf. On average, these vessels combined generated total revenues of approximately \$60.37 million, of which \$24.96 million were from red snapper and \$35.41 million from other species. The average annual revenue per vessel was approximately \$148,000. Red snapper accounted for about 41 percent of these vessels' total revenues. Net revenues from fishing operations of these vessels were approximately 36 percent of total revenues.

The best economic data available related to the commercial harvest of hogfish is available through 2017. From 2012 through 2017, an annual average of 61 vessels landed at least 1 lb (0.45 kg) of West Florida hogfish. The average annual total revenue was approximately \$0.12 million from hogfish, approximately \$0.51 million from other species co-harvested with hogfish (on the same trips), and approximately \$1.66 million from trips in the Gulf on which no hogfish were harvested or occurred in the South Atlantic. The average total annual revenue from all species harvested by vessels that harvest hogfish in the Gulf was approximately \$2.29 million, or approximately \$37,000 per vessel. Hogfish accounted for about 5 percent of these vessels' total revenues.

Based on annual revenue information, all of the commercial fishing businesses with the 409 vessels that annually harvest red snapper and those with the 61 vessels that land West Florida hogfish from the Gulf are small entities.

Because all entities expected to be directly affected by this proposed rule are small entities, NMFS has determined that this proposed rule would affect a substantial number of small entities; however, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Since 2007, the commercial sector's harvest of red snapper has operated under an individual fishing quota (RS-IFQ) program. The RS-IFQ program uses shares and allocations to distribute and account for the commercial fishing quota. The proposed rule would increase the quota, which would increase dockside revenue from red snapper. Total dockside revenue for all vessels combined would increase by \$4.462 million in 2019, \$4.170 million in 2020, and \$3.897 in 2021. For the 409 vessels, total revenue per vessel would increase by \$10,909 in 2019, \$10,195 in 2020, and \$9,528 in 2021. The total value of all IFQ shares and all allocation for 2019 through 2021 would also increase.

The reduction of the West Florida hogfish ACL would reduce dockside revenue by \$27,387 (2017 dollars) in 2019, by \$16,543

in 2020, and \$8,179 annually thereafter. The average annual revenue loss per vessel for the 61 vessels that land hogfish would be \$449 in 2019, \$271 in 2020 and \$134 annually thereafter. Those revenue losses represent 1.12 percent, 0.72 percent and 0.36 percent of average annual revenue of the 61 vessels that land West Florida hogfish. The 61 vessels represent approximately 7 percent of the average 877 vessels permitted to harvest Gulf reef fish annually.

The information provided above supports a determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. Because this proposed rule, if implemented, is not expected to have a significant economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Hogfish, Gulf,
Recreational, Red snapper.

Dated: November 28, 2018.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is
proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as
follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, revise paragraphs (a)(1)(i) and (a)(2)(i)
to read as follows:

§ 622.39 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Commercial quota for red snapper*--7.701 million lb
(3.493 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper*--(A) *Total recreational*. The total recreational quota, is 7.399 million lb
(3.356 million kg), round weight.

(B) *Federal charter vessel/headboat component quota*. The Federal charter vessel/headboat component quota applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective through the 2022 fishing year. For the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a)(2)(i)(A) of this section, will apply to the recreational sector. The Federal charter vessel/headboat component quota is 3.130 million lb (1.420 million kg), round weight.

(C) *Private angling component quota*. The private angling component quota applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component quota is effective through the 2022 fishing year. For

the 2023 and subsequent fishing years, the applicable total recreational quota, specified in paragraph (a)(2)(i)(A) of this section, will apply to the recreational sector. The private angling component quota is 4.269 million lb (1.936 million kg), round weight.

* * * * *

3. In § 622.41, revise paragraphs (p) and (q)(2)(iii) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(p) *Hogfish in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida.* If the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, then during the following fishing year, if the sum of commercial and recreational landings reaches or is projected to reach the stock ACL, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of that fishing year. The stock ACL for hogfish, in round weight, in the Gulf EEZ except south of 25°09' N. lat. off the west coast of Florida, is 129,500 lb (58,740 kg), for the 2019 fishing year, 141,300 lb

(64,093 kg), for the 2020 fishing year, and 150,400 lb (68,220 kg) for the 2021 fishing year and subsequent fishing years. See § 622.193(u)(2) for the ACLs, ACT, and AMs for hogfish in the Gulf EEZ south of 25°09' N. lat. off the west coast of Florida.

(q) * * *

(2) * * *

(iii) *Recreational ACT for red snapper*--(A) *Total recreational ACT*. For the 2019 fishing year, the total recreational ACT is 6.263 million lb (2.841 million kg), round weight. For the 2020 and subsequent fishing years, the total recreational ACT is 5.919 million lb (2.830 million kg), round weight.

(B) *Federal charter vessel/headboat component ACT*. The Federal charter vessel/headboat component ACT applies to vessels that have been issued a valid Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective through the 2022 fishing year. For the 2019 fishing year, the component ACT is 2.848 million lb (1.292 million kg), round weight. For the 2020, 2021, and 2022 fishing years, the component ACT is 2.504 million lb (1.136 million lb), round weight. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in

paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector.

(C) *Private angling component ACT*. The private angling component ACT applies to vessels that fish under the bag limit and have not been issued a Federal charter vessel/headboat permit for Gulf reef fish any time during the fishing year. This component ACT is effective through the 2022 fishing year. The component ACT is 3.415 million lb (1.549 million kg), round weight. For the 2023 and subsequent fishing years, the applicable total recreational ACT, specified in paragraph (q)(2)(iii)(A) of this section, will apply to the recreational sector.

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